

Drug Trafficking and Organized Crime (Amendment) Bill 2000

At the Bills Committee meeting on the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 held on 27 May 2002, Members discussed the Administration's response to the issues raised at the meeting held on 3 May 2002 and the related draft Committee Stage Amendments (CSAs) [LC Paper No. CB (2) 2044/01- 02(01) refers]. Members also made some suggestions to revise the CSAs. After further consideration, the Administration has revised the CSAs (see Annex). The revisions made are highlighted below.

Cases in which Restraint Order may be made

2. The new section 2 of Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) (Cap 405) and new section 2 of Organized and Serious Crimes Ordinance (OSCO) (Cap 455) have been amended to cover the scenario where a defendant has been arrested but refused bail. Revised CSAs are at section (a) of both Schedule 1 and Schedule 2 of the Annex. Separately, new section (9) of DTROP and new section 14 of OSCO have been revised to give the court the discretion to set an expiration date for a restraint order or charging order for a person who has been arrested and released on bail or refused bail, having regard to the circumstances of the case. In addition, the expiration date shall not exceed six months after the date on which the order is made. The revised CSAs are at section (d) of both Schedule 1 and Schedule 2 of the Annex.

Notifying the Abscondee of Proceedings in respect of a Confiscation Order

3. The new section 3 of DTROP and new section 8 of OSCO have been revised to give the court the discretion to specify the additional step that should be taken in relation to giving notice of a confiscation order proceeding to a person who has absconded. Revised CSAs are at section (b) of both Schedule 1 and Schedule 2 of the Annex.

Provision of Information about the Value of Property

4. The requirement on provision of information on the value of

property subject to a restraint order or charging order under the new sections 10 and 11 of DTROP and new sections 15 and 16 of OSCO has been revised to remove the need to provide a written statement. The person so requested by an authorised officer would only be required to deliver to the latter documents, or copies of documents or any other information in his possession or control. Revised CSAs are at sections (e) and (f) of both Schedule 1 and Schedule 2, sections (a) and (b) of Schedule 3 and subsections 1(a) and 1(b) of Schedule 4 of the Annex.

Long Title of the Bill

5. This has been revised to take into account the consequential amendments made to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525).

Narcotics Division
Security Bureau
June 2002

**Composite CSAs not relating to
sections 10 and 11 of Schedule 1 or
sections 9 and 10 of Schedule 2**

DRUG TRAFFICKING AND ORGANISED CRIMES (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

Long title By adding “, and to consequentially amend the Mutual Legal Assistance in Criminal Matters Ordinance” after “Crimes Ordinance”.

New By adding -

**“5. Consequential amendments to
Mutual Legal Assistance in
Criminal Matters Ordinance
- (Schedule 4)**

The Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) is amended as specified in Schedule 4.”.

- Schedule 1
- (a) In section 3, in the proposed section 2(11)(aa), by adding "or has refused bail" after "bail".
 - (b) By deleting section 3(a) and substituting -
 - "(a) by repealing subsection (2)(c)(ii)(B) and substituting -
 - "(B) subject to subsection (2A), a person whose exact whereabouts are not known -
 - (I) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)); and
 - (II) notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating

generally in Hong
Kong." ;

(aa) by adding -

"(2A) Where subsection
(2)(c)(ii)(B) is applicable, and
notwithstanding that the court is
satisfied as mentioned in that
subsection, the court may, if it is
satisfied that it is in the interests
of justice to do so, require that
notice of the proceedings mentioned
in that subsection be given to the
person mentioned in that subsection
in such additional manner as the
court may direct." ;

(ab) by repealing subsection (9)(b)(ii) and
substituting -

"(B) subject to subsection (9A), a
person whose exact whereabouts
are not known -

(I) reasonable steps have
been taken to
ascertain the person's
whereabouts (including,
if appropriate, a step
mentioned in paragraph
(a), (b) or (c) of

rule 5(1) of Order 65
of the Rules of the
High Court (Cap. 4 sub.
leg.)); and

(II) notice of those
proceedings, addressed
to that person, has
been published in a
Chinese language
newspaper, and an
English language
newspaper, circulating
generally in Hong
Kong." ;

(ac) by adding -

"(9A) Where subsection (9)(b)(ii)
is applicable, and notwithstanding
that the court is satisfied as
mentioned in that subsection, the
court may, if it is satisfied that it
is in the interests of justice to do
so, require that notice of the
proceedings mentioned in that
subsection be given to the person
mentioned in that subsection in such
additional manner as the court may
direct."."

(c) In section 5, in the proposed section 5(9), by deleting "subsection 7(b)" and substituting "subsection (7)(a) or (b)".

(d) In section 7 -

(i) in paragraph (a)(ii), in the proposed section 9(1)(ba), by adding "subject to subsection (1A)," before "if";

(ii) by adding -

"(aa) by adding -

"(1A) Subject to subsection (1B), where a power conferred on the Court of First Instance by section 10(1) or 11(1) is exercisable only on the ground mentioned in subsection (1)(ba), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date -

(a) subject to paragraph (b), not later than is reasonably necessary for the purposes of

the
investigation
concerned
mentioned in
subsection

(1)(ba); and

(b) in any case, not
later than 6
months after the
date on which
that order is
made.

(1B) The Court of First
Instance may extend a restraint
order or charging order
mentioned in subsection (1A) -

(a) on the ground
only that the
Court of First
Instance is
satisfied that
the defendant
will be charged
with the offence
concerned after
further
investigation is

carried out; and

(b) for not more
than 6
months."."

(iii) by deleting paragraph (b).

(e) In section 8 -

(i) in the proposed section 10(12), by
deleting every thing after "to do so" and
substituting ", documents, or copies of
documents, and any other information (in
whatever form), in his possession or
control which may assist the authorized
officer to determine the value of the
property.";

(ii) by adding after the proposed section
10(13) -

"(13A) A disclosure made in order
to comply with a requirement under
subsection (12) -

(a) shall not be treated
as a breach of any
restriction upon the
disclosure of
information imposed by
contract or by any
enactment, rule of
conduct or other

provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.".

(f) In section 9 -

(i) in the proposed section 11(9), by deleting every thing after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";

(ii) by adding after the proposed section

11(10) -

"(10A) A disclosure made in order to comply with a requirement under subsection (9) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property

concerned in
consequence
of the
disclosure.".

- Schedule 2
- (a) In section 2, in the proposed section 2(15)(aa) -
 - (i) by deleting "where" and substituting "when";
 - (ii) by adding "or has refused bail" after "bail".
 - (b) By deleting section 3(a) and substituting -
 - "(a) by repealing subsection (3)(c)(i)(B)(II) and substituting -
 - "(II) subject to subsection (3A), a person whose exact whereabouts are not known, reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)) and notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an

English language newspaper,
circulating generally in Hong
Kong." ;

(aa) by adding -

"(3A) Where subsection
(3)(c)(i)(B)(II) is applicable, and
notwithstanding that the court is
satisfied as mentioned in that
subsection, the court may, if it is
satisfied that it is in the interests
of justice to do so, require that
notice of the proceedings mentioned
in that subsection be given to the
person mentioned in that subsection
in such other manner as the court may
direct." ;

(ab) by repealing subsection (7C)(b)(ii) and
substituting -

"(ii) subject to subsection (7D), a
person whose exact whereabouts
are not known -
(A) reasonable steps have been
taken to ascertain the
person's whereabouts
(including, if appropriate,
a step mentioned in
paragraph (a), (b) or (c)

of rule 5(1) of Order 65
of the Rules of the High
Court (Cap. 4 sub. leg.);
and

(B) notice of those
proceedings, addressed to
that person, has been
published in a Chinese
language newspaper, and an
English language newspaper,
circulating generally in
Hong Kong." ;

(ac) by adding -

"(7D) Where subsection (7C)(b)(ii)
is applicable, and notwithstanding
that the court is satisfied as
mentioned in that subsection, the
court may, if it is satisfied that it
is in the interests of justice to do
so, require that notice of the
proceedings mentioned in that
subsection be given to the person
mentioned in that subsection in such
other manner as the court may
direct." ."

(c) In section 4, in the proposed section 10(9), by
deleting "subsection (7)(b)" and substituting

"subsection (7)(a) or (b)".

(d) In section 6 -

(i) in paragraph (a)(ii), in the proposed section 14(1)(ba), by adding "subject to subsection (1A), before "if";

(ii) by adding -

"(aa) by adding -

"(1A) Subject to subsection (1B), where a power conferred on the Court of First Instance by section 15(1) or (16)(1) is exercisable only on the ground mentioned in subsection (1)(ba), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date -

(a) subject to paragraph (b), not later than is reasonably necessary for the purposes of the investigation

concerned
mentioned in
subsection

(1)(ba); and

(b) in any case, not
later than 6
months after the
date on which
that order is
made.

(1B) The Court of First
Instance may extend a restraint
order or charging order
mentioned in subsection (1A) -

(a) on the ground
only that the
Court of First
Instance is
satisfied that
the defendant
will be charged
with the offence
concerned after
further
investigation is
carried out; and
(b) for not more

than 6

months.".";

(iii) by deleting paragraph (b).

(e) In section 7 -

(i) in the proposed section 15(12)(a), by deleting every thing after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";

(ii) by adding after the proposed section 15(13) -

"(13A) A disclosure made in order to comply with a requirement under subsection (12) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the

person who made it
liable in damages for
any loss arising out
of -

- (i) the
disclosure;
- (ii) any act done
or omitted
to be done
in relation
to the
property
concerned in
consequence
of the
disclosure."

(f) In section 8 -

- (i) in the proposed section 16(9)(a), by
deleting every thing after "to do so" and
substituting ", documents, or copies of
documents, or any other information (in
whatever form), in his possession or
control which may assist the authorized
officer to determine the value of the
property.";
- (ii) by adding after the proposed section
16(10) -

"(10A) A disclosure made in order to comply with a requirement under subsection (9) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence

of the
disclosure.".

(g) By deleting section 11(b) and substituting -

"(b) by repealing paragraphs 15 and 16 and
substituting -

"15. Drug

Trafficking

(Recovery of

Proceeds)

Ordinance

(Cap. 405)

section 25(1) dealing with

or (1A) property

known,

believed or

suspected to

represent

proceeds of

drug

trafficking

16. Organized and

Serious Crimes

Ordinance

(Cap. 455)

section 25(1) dealing with

or (1A) property

known,
believed or
suspected to
represent
proceeds of
indictable
offence".".

Schedule 3 In section 3, in paragraph (b) -

 (a) in subparagraph (ii) -

 (i) in the proposed section 10(12)(a), by deleting every thing after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";

 (ii) by adding after the proposed section 10(13) -

 "(13A) A disclosure made in order to comply with a requirement under subsection (12) -

 (a) shall not be treated as a breach of any restriction upon the disclosure of

information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.";

(b) in subparagraph (iii) -

(i) in the proposed section 11(9)(a), by deleting every thing after "to do so" and substituting ", documents, or copies of documents, or any other

information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";

(ii) by adding after the proposed section 11(10) -

"(10A) A disclosure made in order to comply with a requirement under subsection (9) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted

to be done
in relation
to the
property
concerned in
consequence
of the
disclosure.".

New By adding -

"SCHEDULE 4 [s. 5]

CONSEQUENTIAL AMENDMENTS TO MUTUAL
LEGAL ASSISTANCE IN CRIMINAL
MATTERS ORDINANCE

1. **Enforcement, etc. of external
confiscation order**

Schedule 2 to the Mutual Legal Assistance in
Criminal Matters Ordinance (Cap. 525) is amended -

(a) in section 7, by adding -

"(11) An authorized officer may,
by notice in writing served on a
person who holds any realisable
property the subject of a restraint
order, require the person to deliver
to the authorized officer, to the
extent that it is practicable to do
so, documents, or copies of documents,
or any other information (in whatever

form), in his possession or control which may assist the authorized officer to determine the value of the property.

(12) A person who receives a notice under subsection (11) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned.

(13) A disclosure made in order to comply with a requirement under subsection (11) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it

liable in damages for
any loss arising out
of -

- (i) the disclosure;
- (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

(14) Any person who contravenes subsection (12) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(15) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence.

(16) A person who commits an offence under subsection (15) is liable -

(a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or

(b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years.";

(b) in section 8, by adding -

"(9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents,

or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.

(10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject to the charging order concerned.

(11) A disclosure made in order to comply with a requirement under subsection (9) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the

person who made it
liable in damages for
any loss arising out
of -

- (i) the disclosure;
- (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

(12) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(13) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence.

(14) A person who commits an offence under subsection (13) is

liable -

- (a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."